ICANN Transcription

Council Committee for Overseeing and Implementing Continuous Improvement

Wednesday, 31 August 2022 at 12:00 UTC

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DEVAN REED: Good morning. Good afternoon and good evening. Welcome to the Council Committee for Overseeing and Implementing Continuous Improvement call taking place on Wednesday 31 August 2022 at 12:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. If you're only on the telephone, could you please let yourselves be known now?

We do have apologies from Antonia Chu, and Philippe Fouquart will be joining us late today.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you need assistance updating your statements of interest, please email the GNSO Secretariat.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

All documentation and information can be found on Wiki space. Recordings will be posted on the public Wiki space shortly after the end of the call.

Please remember to say your name before speaking.

As a reminder, those who take part in the ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you and over to our chair, Olga Cavalli. Please begin.

OLGA CAVALLI: Thank you, Devan. And thank you, everyone. Good morning, good afternoon, good evening, wherever you are. And thanks for joining with us this morning. You may have seen the email sent by Marika with several documents. I have seen that you have reacted and commented in the email list. Many thanks for that.

So this is our agenda. Any comments, additions or changes to the agenda? So no comments for the agenda. So let's start.

First we have the working group self-assessment recommendations report and public comment. We have a document attached. We had comments in the email list. And we have a date to launch the public comments on 7th of September. Any comments from staff about that or from our colleagues in the call in the group? Any suggestions, idea for the comments? Marika.

MARIKA KONINGS: I can maybe start on this item. This is just a reminder—and we discussed this, I believe, on the last meeting as well, that we're ready to launch the public common form on the proposed changes in relation to the working group self-assessments that, as you may recall, this group worked on already a while ago. And but we basically put [going out for] public comment on hold until the SOI task force would be done with its work or have its recommendations ready for public comment, as both pertain to the GNSO operating procedures, and that seemed to make sense to combine those instead of having two separate public comment periods on exactly the same document.

And so in parallel, we've also been coordinating with that group. And we shared with you both the proposed audit report with the recommendations as well as redline changes to the different documents that will be affected by those changes to the working group self-assessment requirements, as well as forms, and as well as the text of the public comment form itself.

As indicated, we're hoping to launch this by next week. The idea— and we'll also call this out probably in some kind of disclaimer as part of the public common form, the reason why we would be launching before ICANN 75 is really to allow those that may have questions or may want to talk about this an opportunity to either talk to their representatives on this group, or reach out to staff so we're able to share any information or questions that people have. And of course, we hope all of you will also be able to kind of point your respective groups to this public common form, and then encourage them to participate in it and share their feedback.

And we will of course make sure that there's sufficient time after the ICANN meeting to accommodate for any travel that people may do. So again, that there's sufficient time for people to provide their input as this will touch both upon the volunteer working group self-assessment, as well as the statement of interest procedures.

If there's any kind of further feedback or input you have either on the recommendations or report or the text for the public comment period, please let us know by the end of this week, the materials should be pretty self-explanatory.

The one thing I wanted to flag as well, as some of you may have seen, staff did run a working group self-assessment on the group that recently closed, the IGO curative rights PDP working group using kind of the new approach and questions and also asking the group at the end of that, what they thought of this new approach. So that is also an input that we'll be taking back to this group. And I think from a staff site, we also have some lessons learned from that experience and some suggestions we may want to take forward. So again, we'll probably prepare kind of a staff input as well, that altogether then will hopefully allow the group to review that input and kind of decide what, if anything, needs to be changed to the current recommendations when it comes to a working group self-assessment. So I hope that that is clear.

OLGA CAVALLI: Can we open the document that we sent by email, so maybe we can take a look and see if there are comments, suggestions and reactions?

MARIKA KONINGS: So just to note, this is the template for opening the public comment proceeding. So it has some required information. So basically, the title, description, what this represents, then the two topics that are covered, one focused on the GNSO working group assessed self-assessments and we've kind of summarized there the objectives of this exercise, as well as the high-level recommendations of the group. And then of course, we'll include as well a link to the recommendations report so people can review that material. And then separately, covers as well the work of the GNSO statement of interest at task force and links to the different work products that they have provided.

And it also references—because I think as I've mentioned before, as well, staff supporting has taken the opportunity as well of updates or changes to the operating procedures to also do kind of a deep dive and seeing if there were any cleanup items that needed to be dealt with. And Julie has gone through that. And there are a couple of areas where either there's inconsistency in terminology or references that are outdated or links that didn't work. So that's also something we've done. And we'll provide and a detailed overview of those additional changes that are being suggested. And as said, from a staff perspective, those are purely editorial and not substantive. But of course, if anyone thinks there's something in there that doesn't belong there, they can also point that out in the public comments form.

And then of course, it talks about the close date, and what the background information on that and the section where we talk through all about the CCOICI and how it's formed and its

objectives. And basically, the next steps which will be to review the comments it'll receive.

So that is the one document that was shared. And the other one is one that actually dates back to 7th of February, which the group already reviewed, and also already went to Council, which is basically the kind of recommendations report that basically provides an overview of the work of this committee with regards to the working group self-assessment, as well as the specific updates that have been made. And we'll just show this, is maybe the easiest.

It basically shows based on the group's work, what changes would need to be made to the GNSO operating procedures with regards to Section 7, which talks about the working group self-assessments, and the working group charter template, which would also need to be updated, the proposed periodic survey, that is also included here, as well as the last section of technical requirements that the group would like to see if feasible.

So that's in a nutshell the two documents that were shared. The group has already reviewed these. But of course, it has been a while ago. So if there's still something that stands out or if you think that needs to be updated, please let us know by the end of this week. We need to submit these materials early next week to get this up and running by the 7th of September. And then of course, once that goes live, we'll let you know. And hopefully this is something that you can share with your respective groups. And as previously said, if there are a few minutes on the agenda of prospective stakeholder group and constituency meetings, maybe you can just kind of flag that this is open now and if anyone has

any questions, that they can reach out to all of you for further information or insight into the background of these recommendations.

OLGA CAVALLI:

Thank you, Marika. Are we okay with these documents and dates for public comments? I think this is a usual procedure. I guess it's not different for this process. No objections for sending it out from Desiree. Okay from Thomas. Thank you for that.

That would be point number two of the agenda. Let's see number three, Work Stream 2 recommendations number three. Remember that we have been working on that, recommendations for a framework of interpretation for human rights. And we have to continue deliberations. There is a document that was shared and I saw different comments in the email list, many thanks for that. Can we share the documents and see if we have reactions from colleagues?

So I saw some reactions to this document. I don't know if you want me to read the email comments or you want to speak up now. There's a comment from Thomas, Desiree, and someone else, I cannot recall right now. We can go through those document comments or you just can comment now. Thank you, Philippe, Manju and—who else agreed with the previous point of the agenda?

Okay, Desiree proposed that we go through this document. Should we read it off? That's the idea. Okay, so Work Stream 2 recommendations number three, recommendations for framework

of interpretation for human rights, initial deliberation, staff, findings, possible recommendations.

So, our group is considering defining and incorporating human rights impact assessment, HRIA, in the GNSO policy development process. We recognize the importance. So CCOICI points out that the GNSO [inaudible] proposed recommendations, which could consider areas such as economic competition, operations, privacy and other rights, scalability and feasibility.

In addition, there is ample opportunity for the community to provide input on the potential impact on human rights of a certain topic during the various public comment periods that take place in the PDP lifecycle.

Comments, reactions. Okay. At the same time, CCOICI recognizes that there may be opportunities to further highlight the importance of considering the impact on human rights. But this should not be limited to a single point in time during the PDP but should be a continuous effort.

Similarly, considering the impact of GNSO policy development on human rights cannot be the responsibility of one single entity. It should be a shared responsibility between ICANN Org, the ICANN community and the ICANN Board.

See no comments in the chat. To facilitate this continuous consideration in the impact of GNSO policy development on human rights CCOICI recommends that existing templates such as the request for an issue report, preliminary issue report, charter template, initial report and final report are updated to highlight that

attention needs to be given to whether an impact to human rights is likely to or expected as a result of the consideration of a specific topic and/or the related recommendations. Flagging potential impact on human rights at an early stage in the process will assist in focusing attention on this topic throughout the deliberations as well as allowing for more detailed human rights impact assessment if an impact is expected or established. Marika.

MARIKA KONINGS: Thanks, Olga. I think I just wanted to flag here that I think that is where we basically have kind of landed with the conversation. I think also the input that we've received—and I really appreciate Thomas doing some digging and some reaching out, because I think the question that the group needs to answer, if there is indeed agreement that consideration of human rights needs to take place throughout the different stages of the PDP, what does that look like?

And I think at least what I've understood from the group, there should already be kind of a very early check, for example, when the issue report is requested, someone may already be asked a question, do you anticipate that this will have an impact on human rights? If the answer is yes, see if there are further details available and use that as well as a way of kind of throughout the process, check if that indeed is the case, and indeed determine if a more detailed impact assessment needs to be done. Or if the answer is no, maybe initially, there's no specific attention that is needed. But again, that same question may need to be asked in the subsequent steps of the PDP, for example, in the issue report itself, in the PDP charter, initial report, final report. And of course,

after that, as well, it'll go to Council as well as Board. So there are numerous steps into PDP.

I think the question for the group is, what does that look like in practice? Or how much do you want to prescribe that consideration in these different work products? And at a very quick look at the document that was developed, I think, by the CCWP HR on—I think they looked at the phase two recommendations where they did do a very detailed assessment and basically took, I think, each recommendation and kind of asked a number of questions.

So is the expectation that something like that would happen for each initial report or final report [inaudible] specific recommendations? Or is that something that is only done if and when there's clear indication that there may be an impact? And who makes that determination?

I think in the last bullet, we're basically saying the Council is here the manager of the PDP and needs to make sure that due consideration has been given to various factors, including the impact of recommendations on a number of different areas, including human rights. So is that the Council that makes a determination, how much resources are dedicated to that? Because of course, that's another question and might be an interesting one as well to ask the working party how much time does it take them to do that? Because I think there's also a time consideration that may need to go into it. And as well, a resource consideration is that working group, for example, a vehicle that would do that at a final report stage and provide that input, for example, to council.

So, again, I think from the staff perspective, that is a bit what we're hoping to group can discuss or provide some feedback on which I think then also allows us to provide further updates to this document, and kind of really think through what is it specifically that you would like to recommend for each of these work products and whether or not there is indeed a trigger that would result in a more detailed analysis like the one that was done for the EPDP phase two report, and if so, is a template that that group has developed something that can be applied and as well or be made available to PDP working groups to use, or is it the expectation that an external group like the working party would be asked to do something like that? So I think I'll leave it at that. And really appreciate the input that was already provided by Thomas. And I think I saw Desiree respond as well, although, I think both noted as well that they might have difficulty speaking during the call. So I'm doing maybe a bit of the talking for them.

OLGA CAVALLI: Thank you, Marika. Comments, reactions. And thank you for all the details. And thank you for the reactions in the email. Much appreciated. So the last paragraph, I think it was really explained by Marika. Can we think about the last question? Is there a checklist or a template that exists or could be created to facilitate the consideration of the impact of the GNSO policy development on human rights? I'm not an expert in the issue. So I defer this answer to my colleagues in the group.

Okay, I think we can have this question and think about it. Desiree, go ahead.

DESIREE MILOSHEVIC: Yes. Thank you. Going back to what Marika was saying, yes, I also had a look at that document that Thomas has kindly forwarded to the list. It seems to be a very detailed template or a checklist as an example. And I think it's down to each PDP how detailed they would go.

However, I think the crux is here for us to discuss whether we think [such a] checklist or template will be best placed within the charter template or the initial report and the final report. And my leaning seems to be to really look at how other considerations that are also part that the GNSO has to take into consideration whether it's economic or some other—in addition to the human rights, where is it placed, and is it specifically pleased in any of the requests for initial report, the preliminary report or the charter template?

So as I said, it would be nice to be in the charter template, because it may be a checklist on its own standing for a particular PDP where it may not be a consideration, like we mentioned, transfer policy, for example, where it's a purely operational action, it may not be required. However, it should be mentioned. So still need time to think this through, but I would think that in the latter three, the consideration should be placed either in initial report or seems like a good place. And then the final report, of course, if the working group finds out there are particular considerations that impact human rights and any of the, for example, data privacy or access to information and so on. Thank you.

OLGA CAVALLI: Thank you very much, Desiree. I see Manju has her hand up.

MANJU CHEN: Thank you. I think the question of whether Council has to decide which PDP has well or risks having human rights impacts, as I understand it, as the manager of PDP, Council has the responsibility to consider this, but I wonder, or I suspect that Council have the expertise to make this evaluation. So I am certain that Council has the responsibility. But I don't know if Council has to do this. Maybe it's better to incorporate kind of like this working party, whenever we are receiving an issue report or initial report, we kind of consult them in a way to make sure that, okay, there is no impact, or oh, there is an impact.

Because from what Thomas has provided in his email, apparently, like the working party, they identify PDPs that have impact themselves. So I think it's better if we work together. So we tell them, oh, there's a PDP now, maybe you want to check if there's an impact on this PDP. So then they don't have to go extra miles to search for themselves and identify for themselves. And if we need to create a checklist or templates, I think it's also better for you just consult them, and we do it together in a way so we don't lose the expertise in creating such templates and doing this process. Thank you.

OLGA CAVALLI: Thank you very much, Manju. Thomas, your hand is up.

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THOMAS RICKERT: Thanks very much, Olga. Hi, everybody. And sorry for not being able to speak all the time, the I thought that it would probably make sense for us to pick up Ephraim on his offer to talk, because I'm not a subject matter expert on human rights. And I think that he might have ideas on how we can keep the process as lean as possible, whilst following the standards that we would typically apply when looking into human rights impact on policy or contracts or otherwise.

I think that what they have done in the correspondence that [inaudible] it's very, very thorough. And I think that that might scare a lot of folks think, okay, we are encumbering the PDP work with yet another dimension that will prolong PDP work potentially unnecessarily where the implications on human rights are enormous.

So ideally—and I really don't care whether it's in the initial report or where we place this in the PDP lifecycle. Maybe we can talk to Ephraim or I can reach out to him in case you would like me to do so to ask him whether we can take a staggered approach, maybe with a very lean questionnaire to see whether there's smoke or there's fire.

And if we can answer a couple of simple questions and rule out that there is significance for human rights, then we can proceed with the work without any further impact assessment, and we let the commenters during the public comment period tell us if we got it wrong.

So there is still a check and balance during the process. And only if we find that there are certain flags raised in the initial

questionnaire, so to speak, then a deeper dive into the human rights impact would be required.

I'm not sure whether this is possible. But I think that probably that could be a way forward suiting everyone's needs, being as expeditious as we can while being diligent depending on the attention that the matter at hand requires in terms of human rights.

OLGA CAVALLI: Thank you, Tomas. I see in the chat man to agreeing that we should invite Ephraim to our next call. I agree that having people with—As I said, it's not my area of expertise, human rights. So any comments from those who are more involved, at least for me, are very much welcome. Marika.

MARIKA KONINGS: Thanks, Olga. Responding to a couple of comments. I think Manju really hit the nail on the head. And you already made that point as well. And I think Thomas similarly. For example, that the issue report or request for an issue report already asks the submitter to basically identify what is the economic impact of the issue and/or its effect upon competition, consumer trust, privacy or other rights.

But of course, it all depends on the expertise of whoever is submitting, what kind of detail or what kind of knowledge they have. So indeed, some kind of—as Thomas suggests, some kind of basic questions to determine, is there smoke or fire maybe helpful.

I did see I think on the A CCWP website as well that they have developed a kind of chart that seems to link a number of basic human rights to potential policy areas which may be a potential approach. Indeed, if a requester is asked to identify, do you think it's linked to any of these human rights and give examples of in which cases there may be a link.

And of course, there's still as well the issue of human rights only apply as far as they are also applicable in national law that applies. So I think for ICANN this, of course, may be a complicating factor, because there are many different ways of looking at that or depending on what is required from whom, what may apply.

So indeed, in certain cases, detailed analysis may be necessary to better understand whether or not something is applicable. But as Thomas noted as well, they may not be necessary for everything, because obviously work does go into that.

One thing I wanted to flag as well, I actually did a bit of kind of quick research to see how other organizations deal with this question and actually found a document from European Commission where they kind of outline more in general how to determine whether or not an impact assessment needs to be done or whether that's a privacy impact assessment, an economic impact assessment or a human rights impact assessment.

And the way they talk about it is only if or when a policy issue is expected to have significant impact on both a macro as well as a micro level is when further investigation may be necessary. They do of course indicate that there's still some subjectivity into

whether or not it affects macro or micro level, and how you undertake that evaluation. But that might also be something to kind of think about, on Indeed, what kind of impact and on whom is an issue and potential recommendations expected to relate to, to be able to make this assessment off is a significant impact anticipated, which may require further consideration and further work. So that's what I just wanted to share.

OLGA CAVALLI: Thank you, Marika. So any other comments and reactions to this proposal of inviting Ephraim or other expert in human rights and try to build this group of questions and highlights that we were having in mind? Any other comments? Marika.

MARIKA KONINGS: Yeah, I just put my hand back up to maybe make a suggestion. I think Thomas mentioned that Ephraim is going to be in Kuala Lumpur. I think there are signup rooms that we can make use of okay—kind of looking at Devan. So I don't know if we could try and maybe having kind of an affordable meeting with those of you that there are there in person and seeing with Ephraim's availability to see if we can maybe just get into a room and kind of have a conversation around this is what we're looking at, some of the questions we have, what is your experience in this area or what would you kind of recommend or who else should we be talking to? And that may then be helpful in kind of determining next steps and maybe setting up a more formal conversation about this topic with the whole group. So that might be a potential way of kind of moving this forward, if that would work for others.

OLGA CAVALLI: I think it is a very good idea. For some reason I can't open the chat. I see some comments from Desiree but I cannot read it. I think it's a good idea. If we have a room and if colleagues have the time and willingness to join, that would be—

Manchu says that if Marika—if you can share the European Union Commission evaluation. And Desiree is agreeing with the idea of inviting Ephraim.

So I think, yeah, finding a room and inviting him and other experts will be great. So if staff can help us with that, and if colleagues think that it's a good idea—if not, please let me know. And all reactions. Manju says a meeting in Kuala Lumpur would definitely be helpful. Thank you, Manju.

Okay, yeah, I think we have some next steps defined for this point of the agenda. Thank you for that. We'll check the agenda again. Marika says, "This is not specific human rights, but more broader about when impact assessment needs to be .... Okay. Thank you, Marika.

MARIKA KONINGS: Yeah, on the next item, it's really already about kind of next step and next meeting. Just to flag there that for the moment, our next meeting is scheduled in two weeks, right before people will start traveling or may have already started traveling to Kuala Lumpur. So I think it's a question for the group whether or not that meeting should go ahead, and noting the discussion now of trying to find maybe some time in Kuala Lumpur for an informal meeting.

Maybe that would replace or be basically the next meeting of the group and as said, we can work together and see—and just see Devan posted—yeah, just to note indeed, the signup rooms, there are no services. So that would really be an informal conversation. But as said, If staff can be is available for that meeting, as well, we can of course take some high level notes and share them back to the group. And that's definitely not intended to replace any formal conversation you may want to have with the Ephraim or others on this topic, it's just an opportunity to kind of have an informal chat and basically get his advice on how to proceed and how to have that conversation. So again, there's an option for the group to have a meeting in two weeks, but I'm not sure how much progress we can make without having that conversation with some of those that are more experts in this area than at least I am.

OLGA CAVALLI: Thank you, Marika. So I will start my travel to Kuala Lumpur on Thursday that week, so I'm available on Wednesday if you want to organize the meeting. But I would love to hear from colleagues what they think, if we should have the next meeting in two weeks on Wednesday at the usual time and day, or just try to meet in Kuala Lumpur with the considerations that we will have a room with no services and it would be an informal meeting.

So let me know what you think. [inaudible] Okay, I see no hands, no reactions. I don't know, Marika, if you can see something because I have some problems with my connectivity.

MARIKA KONINGS: There are some comments in the chat. Flip is mentioning he would prefer trying to meet in Kuala lumper. And Manju is noting that she already starts traveling on the 11th of September. And so in light of that, I think it may make sense for us to try and schedule an informal meeting in Kuala Lumpur. If you agree, I can maybe reach out to Ephraim and note your conversation and the desire of the group to start a conversation with him to talk about potential next steps and the expertise that he and others in the working party may have that may be useful for this group. And based on his availability in Kuala Lumpur, we can then send out a Doodle poll to this group to try and find a time and get a sign up room for that meeting.

I do suspect that we may need to wait closer to the Kuala Lumpur meeting to actually be able to confirm because I think signup rooms usually don't become available kind of right before the start. But we can maybe already try to lock down a time and date and then see if we're able to get a room for that.

OLGA CAVALLI: Thank you. And I see agreement from Thomas and other colleagues to try to meet in Kuala Lumpur. I think Sebastien cannot make it to Kuala Lumpur. So meeting there, particularly if Ephraim can attend, makes full sense.

Okay. So it seems to me that we have agreement meeting in Kuala Lumpur. So we won't have the meeting in two weeks on Wednesday. This is what we are saying, right? We replace our meeting for the Kuala Lumpur one.

MARIKA KONINGS: Yes, correct. And I think we can already go ahead then and schedule our next meeting after Kuala Lumpur with kind of the week break and then basically the second week after Kuala Lumpur and go back to our usual cycle.

And one thing, because we have already started working on the recommendations report capturing the other work the group has already done, I think I will just already go ahead and share that with the group so you have some good reading material for those of you travelling to Kuala Lumpur, already start having a look at that. And it basically just kind of writes up what we've already discussed and also captured in the work plan and the notes of the different meetings with regards to the designations for the different Work Stream 2 recommendations, as well as, I think in two or three specific cases, recommendations for how to implement those recommendations.

And of course, eventually, we would add to that report the group's recommendations in relation to the human rights recommendation. But at least if you want to start review of the other sections, that's something already you can take off your list.

OLGA CAVALLI: Thank you, Marika. Any other comments, questions? In the meantime, let me tell you that I will be in Kuala Lumpur, I will meet you with our informal meeting, but this will be my last meeting in this group because I will end my GNSO term at the end of this next meeting in Kuala Lumpur. so you may have to think about

who would be the next chair because I will not be part of the GNSO anymore. And let's have that in mind and we have maybe two weeks or some more time to think about it.

Any other comments, questions, reactions? Tell me IF there is something in the chat.

MARIKA KONINGS: Manju is telling us that you shouldn't leave us. I think we all agree with that.

OLGA CAVALLI: I know, I sent my proposal to the NomCom but they didn't select me. So that's not in our hands. But I will be around. They selected me for the ccNSO so I will meet you around in the coffee breaks and lunches and activities. So I will be around. So that's not a problem. But just try to think about who will be able to chair the meetings when I leave. But we'll meet in Kuala Lumpur anyway.

Okay, thank you very much. I wish you a nice rest of the week. Have a nice weekend as well and nice flights and safe rides if you're traveling to Kuala Lumpur.

DEVAN REED: Thank you all for joining. Once again, this meeting is adjourned. I'll end the recording and disconnect all remaining lines. Bye.

[END OF TRANSCRIPTION]